TABLE OF CONTENTS

I. Statement of Issue 1
II. No Substantial Federal Question Is Presented 3

Cases Cited

Wheeling Steel Corp. v. Glander, (1949) 337 U.S., 562 .. 3

Statute Cited

Ohio Revised Code—
5725.25 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1126

On Appeal from the Supreme Court of Ohio and from the Court of Appeals, First Appellate District, State of Ohio

RESERVE LIFE INSURANCE COMPANY,
Appellant,

vs.

STANLEY J. BOWERS, TAX COMMISSIONER OF OHIO,
Appellee.

STATEMENT OPPOSING JURISDICTIONAL STATEMENT AND MOTION TO DISMISS OR AFFIRM

I. STATEMENT OF ISSUE

Appellant is a Texas insurance company authorized to conduct an insurance business in Ohio. For the privilege of doing so it pays an annual franchise tax. Domestic insurance companies are also required to pay such a tax. The statutory formula for the tax computation is not, however, the same. Both domestic and foreign insurance com-

panies are required to pay a tax on real estate where the same is located.

The provision of the Ohio law principally involved is Section 5725.25, Revised Code, which provides:

> "The real estate of a domestic insurance company shall be taxed in the place where it is located, the same as the real estate of other persons is taxed, but the tax provided for by sections 5725.01 to 5725.26, inclusive, of the Revised Code, *shall be in lieu of all other taxes* on the other property and assets of such domestic insurance company and of all other taxes, charges, and excises on such domestic insurance companies, * * *" (Emphasis added)

With the foregoing as background, attention is now directed to a statement at page two of appellant's brief. The first sentence under the heading "JURISDICTION" reads:

> "The statutes of Ohio levy upon foreign insurance companies a tax on personal property used in business, *but do not levy this or any other personal property tax upon domestic insurance companies.* * * *"
> (Emphasis added)

This statement implies that there is a lack of equal protection after a foreign company has been admitted to do an insurance business in Ohio. However, such is not the situation and there is no denial of equal protection in that the statutes can be construed to produce a discriminatory result.

What gave rise to the controversy below is that Ohio levied an *ad valorem* tax on furniture and fixtures used in business by appellant. The authority to do so was challenged by appeal from the Tax Commissioner's above action to the Board of Tax Appeals which is a quasi-judicial body without authority to declare an Ohio statute unconstitutional. The Tax Commissioner's action was affirmed.

The above Board's decision was appealed to the Court of Appeals having jurisdiction to review the same. A refusal to reverse resulted in a request that the Supreme Court of Ohio, as the court of last resort, review the case. The appeal as of right was denied for the reason that no substantial constitutional question was found to exist.

The appellant claims herein that there is a Federal constitutional question in that the upheld Ohio taxing statutes violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. In opposition thereto it is respectfully suggested no such question exists.

II. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

Appellant places principal reliance on *Wheeling Steel Corp. v. Glander* (1949), 337 U. S., 562. The decision therein pivoted on the proposition that the Ohio taxing statutes denied equal protection because certain intangible property of foreign corporations was subjected to taxation, whereas the same kind of property was exempt from taxation when owned by domestic corporations.

Appellant bottoms its entire case on the proposition that furniture and fixtures of a domestic insurance company are *exempt* from taxation but are subject to taxation when owned by a foreign insurance company. The Ohio laws do not so provide and cannot be so construed. The statutory mandate that the privilege or franchise tax against a domestic company "shall be in lieu of all other taxes" does not operate as an "exemption" from taxation as that term must be understood.

Appellant has shied away from claiming in specific terms that the Ohio law provides for a tax exemption for a domestic company that is denied to a foreign company in

respect of the same tangible property. However, there is the inference in brief that domestics and foreigns do not receive equal treatment and hence the Ohio personal property statute that subjected appellant's furniture and fixtures to taxation should be declared unconstitutional as applied to foreign insurance companies.

There is in reality no Federal constitutional question. The jurisdiction of this Court is accordingly erroneously sought to be invoked.

Wherefore, it is respectfully submitted that this appeal should be dismissed or that the judgment and decree of the Ohio Supreme Court disallowing the appeal as of right should be affirmed.

Respectfully submitted,

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